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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200058

DATE: January 28, 1981

MATTER OF: Donald Bodine - [Effect of Pay Ceiling
on Title 5 Premium Pay]

DIGEST: Section 5547, title 5, U.S.C., limits aggregate biweekly basic pay plus premium pay covered by that section to biweekly rate for maximum rate for GS-15. PATCO's contention that maximum rate for GS-15 is maximum scheduled rate (\$57,912), rather than maximum payable rate (\$50,112.50), must be rejected. Recent appropriation acts require that, in administering a provision of law such as section 5547 which imposes a limitation on the basis of a rate of basic pay, the rate of basic pay must be construed to be the rate payable.

This action is in response to a request for a decision filed by Robert H. P. Finnegan, Special Assistant to Regional Vice President George W. Kerr, Professional Air Traffic Controllers Organization (PATCO), on behalf of Donald Bodine, an air traffic controller employed by the Federal Aviation Administration (FAA). Pursuant to 4 C.F.R. Part 21, as amended, 45 F.R. 55689-92 (August 21, 1980), FAA was served with a copy of PATCO's submission but has filed no written comments or response. 4 C.F.R. § 21.4.

The issue here is what is the limit imposed by 5 U.S.C. § 5547 on aggregate biweekly pay. As used here aggregate pay means basic pay plus premium pay, and premium pay means overtime, night, standby, Sunday, and holiday pay authorized for General Schedule employees by subchapter V, chapter 55, title 5, United States Code. 5 U.S.C. § 5547 provides:

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"An employee may be paid premium pay under section 5542 [overtime rates], 5545 (a)-(c) [night, standby, and irregular overtime differentials], and § 5546(a), (b) [Sunday and holiday pay], of this title only to the extent that the payment does not cause his aggregate rate of pay for any one pay period to exceed the maximum rate for GS-15."

PATCO argues that "maximum rate for GS-15" in this provision of law means the maximum scheduled rate, step 10 - currently \$57,912. Executive Order 12248, October 16, 1980, 45 F.R. 69199, 69201, October 20, 1980. It is their contention that 5 U.S.C. § 5308 and recent appropriations acts which limit the maximum rate payable for GS-15 to the rate payable for level V of the Executive Schedule - currently \$50,112.50 - apply to basic pay only and do not limit premium or aggregate pay.

The maximum rate payable for GS-15 is limited by U.S.C. § 5308, which reads:

"Pay may not be paid, by reason of any provision of this subchapter, at a rate in excess of the rate of basic pay for level V of the Executive Schedule."

Finally, level V of the Executive Schedule is presently limited to \$50,112.50, section 101(c) of Public Law 96-536, December 16, 1980 (H.J. Res. 644) - the current continuing resolution authorizing expenditures - which provides:

"***the provisions of section 306(a), (b), and (d) of H.R. 7593 (providing salary pay cap limitations for executive, legislative,

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and judicial employees and officials) shall apply to any appropriation, fund, or authority made available for the period October 1, 1980, through June 5, 1981, by this or any other Act."

H.R. 7593 is the Legislative Branch Appropriation Act, 1981, as passed by the House of Representatives on July 21, 1980. Section 306 provides:

"(a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is-

(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title V, United States Code, or any other provision of law or congressional resolution.

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"(d) For purposes of administering any provision of law, rule, or regulation ***which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after application of this section shall be treated as the rate of salary or basic pay."

While section 5308 and recent appropriations acts, including Public Law 96-536, above, do apply directly to basic pay, section 5547 is a limitation on aggregate pay (basic pay plus premium pay) prescribed in terms of basic pay (maximum rate of GS-15) which is derived through these provisions.

Clearly section 306(a), through 5 U.S.C. 5308, limits the maximum rate payable for GS-15 to the rate payable for level V of the Executive Schedule - currently \$50,112.50. It is equally clear in our view that section 306(d) requires that in administering 5 U.S.C. § 5547 - a provision of law which imposes a limitation on the basis of a rate of basic pay - the maximum rate for GS-15 be construed to be the maximum rate payable under section 306.

Accordingly, the maximum aggregate biweekly basic and premium pay allowable under 5 U.S.C. § 5547 is the maximum biweekly rate payable for GS-15 (currently \$1,927.20) and claims for amounts in excess thereof may not be allowed.



For The Comptroller General
of the United States